

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Stephanie Lowe,

Plaintiff,

vs.

Case No. 1:14-cv-775

BNSF RAILWAY COMPANY,
(DELAWARE corporation),

Defendant.

**COMPLAINT FOR PERSONAL INJURY UNDER
THE FEDERAL EMPLOYERS LIABILITY ACT (45:0051)**

COMPLAINT AND JURY DEMAND

COMES NOW Stephanie Lowe ("Lowe") by and through her attorneys, Thomas M. Flaskamp, Hunegs, LeNeave & Kvas, and Mark Komer, Long, Komer and Associates, P.A., and for her claims and causes of action against the BNSF Railway Company, a Delaware corporation, (hereinafter "Defendant"), states and alleges that:

1. This action is brought to address the violation of Lowe's federal rights under federal law known as the Federal Employers' Liability Act, 45 US § 51 et. seq.. The jurisdiction of this Court is invoked to secure compensatory and other relief for the personal injury Lowe has suffered and for damages allowed by statutory and common law.

PARTIES

2. Plaintiff is a resident and citizen of the City of Clovis, County of Curry, State of New Mexico.

3. At all material times, Defendant was a corporation, duly organized and existing under the laws of the State of Delaware, transporting rail cars interstate into and through the State of New Mexico.
4. Defendant's principal place of business in the State of New Mexico is in the County of Valencia, and its agent for service is Leslie L. Keener, 106 North First Street, Belen, NM 87002.
5. At all times material herein, Plaintiff was employed by Defendant as its servant and employee, and as such was working and engaged in interstate transportation and commerce and was working in the furtherance of Defendant's interstate commerce and in work which directly, closely and substantially affected the general interstate commerce carried on by said Defendant as a railroad common carrier of freight for hire.

JURISDICTION AND VENUE

6. Jurisdiction of this Court is based upon Title 45 U.S.C. §§51, *et. seq.*, commonly known as the Federal Employers' Liability Act ("FELA"). This action is timely commenced within the meaning of 45 U.S.C. §56.

FACTS COMMON TO ALL COUNTS

7. On or about October 11, 2013, Plaintiff was working in the course and scope of her employment as a locomotive engineer for Defendant when she was fell through a locomotive floor deck, suffering severe and permanent injuries. Said locomotive flooring was negligently installed by Defendant, thereby creating a hazardous and dangerous condition.

COUNT ONE - NEGLIGENCE

8. Plaintiff's injuries and damages were caused, in whole or in part, by Defendant failing to provide Plaintiff with a reasonably safe place to work in violation of the FELA.

COUNT TWO– FEDERAL LOCOMOTIVE INSPECTION ACT (LIA) VIOLATION

9. Plaintiff realleges and reincorporates paragraphs 1-8 of this Complaint as though fully set forth herein.
10. Defendant violated 49 U.S.C. § 20701 *et. sec.* by using a locomotive on its line which was unsafe and not in proper condition to operative without unnecessary peril to life and limb.
11. Defendant's violation of the LIA holds it strictly liable for Plaintiff's damages and bars the affirmative defense of contributory negligence.

DAMAGES

12. Plaintiff realleges and reincorporates paragraphs 1-11 of this Complaint as though fully set forth herein.
13. That due in whole or in part to Defendant's aforementioned negligence and statutory violation, Plaintiff sustained severe and disabling injuries.
14. That due in whole or in part to Defendant's aforementioned negligence and statutory violation, Plaintiff sustained injuries, and has suffered and will continue to suffer personal losses, pain and suffering, and loss of enjoyment of life.

15. That due in whole or in part to Defendant's aforementioned negligence and statutory violation Plaintiff has lost wages in the past, and will continue to lose wages in the future and will sustain a permanent diminution of her earning capacity and has otherwise lost economic benefits.
16. That due in whole or in part to Defendant's aforementioned negligence and statutory violation, individually and collectively, Plaintiff has made an effort to treat, heal and relieve her injuries, Plaintiff has spent and will continue to spend monies for medical, nursing, and related medical care.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the above-named Defendant in an amount established by the evidence and sufficient to fully compensate Plaintiff for damages and losses suffered, together with all costs, disbursements, interest, and whatever other relief the Court deems appropriate.

JURY TRIAL DEMANDED.

LONG, KOMER AND ASSOCIATES,
P.A.

/s/ Mark E. Komer
MARK E. KOMER
2200 Brothers Road
P. O. Box 5098
Santa Fe, NM 87502-5098
505-982-8405
505-982-8513 (FAX)

Thomas M. Flaskamp
Hunegs, LeNeave & Kvas
1000 Twelve Oaks Center Drive, Suite 101
Wayzata, MN 55391
612-339-4511
612-339-5150 (FAX)
Attorneys for Plaintiff